

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CODY C. LEAVITT,

Plaintiff,

vs.

NEVADA DEPT. OF CORRECTIONS, *et al.*,

Defendants.

Case No. 2:13-cv-00654-JAD-GWF

ORDER

Application to Proceed in Forma
Pauperis (#2)

This matter comes before the Court on Plaintiff's Complaint and Application to Proceed in Forma Pauperis (#2), filed on May 6, 2013.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to his Application and Complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit under section 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore, Plaintiff's request to proceed in forma pauperis in federal court is granted

II. Screening the Complaint

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint under section 1915(a). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under section 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of

1 the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
4 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
5 essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short and plain statement of
7 the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*
8 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing *Papasan v.*
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
13 129 S.Ct. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
14 allegations, do not suffice. *Id.* at 1949. Secondly, where the claims in the complaint have not
15 crossed the line from plausible to conceivable, the complaint should be dismissed. *Twombly*, 550
16 U.S. at 570.

17 Plaintiff asserts a claim under 42 U.S.C. § 1983, alleging that Defendants violated
18 Plaintiff’s constitutional right of access to the courts. Specifically, Plaintiff claims the law library
19 of his correctional facility, High Desert State Prison (“HDSP”), is inadequate because it lacks a
20 copy of “local rules,” Attorney General Opinions older than 50 years, and forms for various state
21 writs, including writs for prohibition, quo warranto, coram vobis, ne exeat, audita querela, fieri
22 facias, and ad prosequendum, among others. Plaintiff also claims that the lack of these resources
23 caused a state criminal appeal and a “medical injunction” that was not filed in accordance with the
24 local rules to be procedurally dismissed .

25 Prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817,
26 821 (1977). Such access can take the form of an adequate law library or adequate assistance from
27 persons trained in the law. *Id.* at 828. A prisoner alleging that he was denied his constitutional
28 right of access to the courts must establish: (1) that his ability to access the library was so limited

1 that it was unreasonable; and (2) that this limited access caused him actual injury. *Vandelft v.*
2 *Moses*, 31 F.3d 794, 797 (9th Cir. 1994). Actual injury occurs when the inadequacy of court access
3 frustrates the pursuit of a nonfrivolous claim. *Lewis v. Casey*, 518 U.S. 343, 352–53 (1996) (to
4 state an access-to-courts claim, inmate must “demonstrate that a nonfrivolous legal claim had been
5 frustrated or was being impeded”). The injury requirement is only satisfied by the frustration of
6 limited types of claims; specifically, hindered claims must be either direct appeals from the
7 conviction underlying the incarceration, or claims under section 1983 to vindicate basic
8 constitutional rights. *Id.* at 354.

9 Here, the Court finds that Plaintiff has not pled sufficient facts to establish that any
10 inadequacies of HDSP’s law library caused him actual injury. Plaintiff avers that a criminal appeal
11 was procedurally dismissed, but he does not plead that the appeal was of the conviction underlying
12 his incarceration. Neither does Plaintiff demonstrate how the lack of access to Attorney General
13 Opinions, local rules, or forms of the state writs caused the dismissal of his appeal. Plaintiff also
14 claims a “medical injunction” was denied because it was not filed in accordance with the local rules
15 that were unavailable to him. Plaintiff does not, however, plead facts sufficient to establish that the
16 “medical injunction” was the type of claim frustration of which can give rise to an access-to-the-
17 courts claim—namely, a criminal appeal or section 1983 claim. Because Plaintiff has not pled
18 sufficient facts to establish he suffered actual injury, the Court will dismiss his Complaint.

19 In the event Plaintiff elects to proceed in this matter by filing an amended complaint, he is
20 informed that the Court cannot refer to a prior pleading to make his amended complaint complete.
21 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any
22 prior pleading. This is because, as a general rule, an amended complaint supersedes the original
23 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended
24 complaint, the original pleading no longer serves any function in the case. Therefore, in an
25 amended complaint, as in an original complaint, each claim and the involvement of each defendant
26 must be sufficiently alleged. Accordingly,

27 **IT IS HEREBY ORDERED** that Plaintiff’s Application to Proceed In Forma Pauperis
28 (#1) is **granted**. Plaintiff shall not be required to pay the \$400.00 filing fee.

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